PROFESSIONAL INSURANCE AGENTS

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Submitted Electronically

Commission's Secretary
Office of the Secretary
Federal Communications Commission
Washington, D.C.

Re: Comments in the Matter of Rules and Regulations
Implementing the Telephone Consumer Protection Act of 1991
CG Docket No. 02-278

Dear Commissioners:

On behalf of the National Association of Professional Insurance Agents (PIA National), we submit these comments in response to the Commission's Further Notice of Proposed Rulemaking in the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, published in the Federal Register on April 3, 2003 (68 FR 16250). PIA National members are owners and principals of independent insurance agencies. They employ an average of seven to nine full-time individuals including themselves, who are licensed as insurance producers. Additionally, they employ two to four individuals who are not licensed producers. PIA members represent an average of between five and seven property and casualty carriers and two to three life and health carriers.

PIA National appreciates this opportunity to begin our formal comments on the above-captioned. At this time we request opportunity to further discuss these issues with FCC as it moves through this process. We do so in the belief that the legal conflicts between and among various state and federal laws and regulations, as well as various regulatory oversight authorities, are extensive. We believe this comment period is insufficient for these to be fully conveyed and appreciated, and as such we believe the FCC should not issue a final rule or decision at this time.

At this time, our comments are more general in nature rather than specific to the details of the rules. Until we have a clearer determination from the FCC as to these general issues, PIA National is unable to intelligently speak to the details of the proposed rules.

1. Overarching all our comments, PIA National continues to be confused as to what party legally "owns/controls" the phone number that may be listed for the protections of these efforts? This is critical so that to the extent that PIA members may need to comply, if only when collaborating with an outside telemarketing firm. Our members will need to know to whom a request must be sent, who should authorize use, how authorization would be authenticated, and how the number either gets "delisted" or, how do my members document their permitted use?

In insurance, ownership conveys rights. It is this line insurance parties must follow when determining how we will or can respond. For insurance, these parties are defined and ordered under state insurance law.

We cannot find any authoritative source to guide our commentary to our members on this issue.

The matter for us becomes very complicated because, under insurance law, husband and wife can have equal, duplicative and severable rights under a single insurance policy where only one of them is expressly named as insured. This can extend to dependents and others per the nature of the insurance coverage/transaction/claim may warrant.

In a similar fashion, increasingly, municipalities are permitting multi-families to cohabitate in what were once single-family homes, thus equally sharing rights and obligations under law to include utilities.

So PIA National has found no legal tested, vetted guidance to help us answer the following questions:

1. Who speaks for the phone number?
2. How many people do I need to contact?
3. If an inhabitant wants to receive telemarketing call but a different inhabitant has elected not to receive such calls, whose instructions prevail?
4. If my state's law is multi-party equal and severable – what do I do?

2. PIA National agrees with FTC's recognition that the insurance sector on this issue would not be subject to their direct oversight. FTC did so understanding the history of coordination, complement and deference that is legally necessary under the state regulatory system of insurance. Thus, it is our understanding that the insurance sector is not subject to compliance with the FTC regulations as we conduct our day-to-day operations, *within our own operations*.

However, FTC makes clear that should an insurance entity, such as a PIA member, engage the services of a third party telemarketing vendor to conduct new client solicitations, that vendor remains subject to these FTC regulations.

Thus, our members would be required to conform their marketing design to the compliance requirements of the vendor. Of course, our members would also be required to have the vendor further modify their outbound marketing efforts to the additional restrictions and requirements our members still have to their extensive network of state-by-state insurance regulation, to include state common law decisions.

To the extent that PIA members might use outside sources to conduct a phone sales campaign to develop new customers, the current FTC arrangement is doable. As such, any final rule that FCC issues must be coordinated with FTC's already issued rules, or PIA members in this one area of FTC compliance through the services of an outside, third party (and the third-party vendor) would be confused and conflicted as to what should be compiled with.

3. In past efforts of this nature, FCC addressed the insurance sector, making extensive exceptions to our direct compliance to FCC, as a result of FCC rules. In doing so FCC recognized several legal realities: Insurance is compliant to state law, both regulatory and common. As such, the insurance sector has one of the most detailed legal environments governing the nature, methods, content, obligations, and expectations we assume in the conduct of our trade practices as related to customers, consumers, various status of "insured-interests", claimants, beneficiaries, as well as entire defined, ordered classes of third parties.

Our obligations and duties may change to any one of these parties depending upon the circumstances and nature of the insurance transaction. As such, terms, meanings and the like under federal legislation and regulation usually do not clearly translate to the same meanings and expectations of this complex state system's already established demands of our sector. As an example, this is particularly true in the full areas related to terms such as "current customers," "former customers," and what constitutes "insurance transactions," as well as our required, permitted, and expected actions.

Thus without the already existing extensive exceptions FCC granted the insurance sector previously, insurers and PIA members would be in constant conflict between FCC requirements and state law expectations. These rules are no different and need further coordination and exemptions.

4. The insurance sector today coordinates the end-result desired by FCC through previous efforts with FCC, insurance regulators and state trade practice laws (were legally applicable). Cold calling, that is phoning consumers that you do not already have a business relationship with, is not a general practice of our membership. Of all the areas possibly affected by No-Call rules this is the easier one to develop a coordinated compliance response among all the efforts.

However, as noted in #3, above, No-Call rules become exceedingly difficult for us when attempting to direct or restrict our efforts as applied to current customers. These difficulties also appear when rules attempt to overly limit the nature of transactions permitting us to contact previous customers.

PIA agrees that as respects previous customers, the intent of No-Call rules would be to limit contact of previous customers to only those matters related to issues arising from the previous business relationship. However, current No-Call efforts (federal & state) attempt to further define and limit the matters in a previous business relationship that would permit phone contact, and these conflict with what the law now permits and requires of our members.

For example, when a state insurance department and court issue an order of insolvency on a given carrier, PIA members that have represented that carrier have certain expressed obligations, as well as a number of expected responsibilities. The expressed obligations are articulated in state regulations. The expected responsibilities are inferred or referred to by the courts as practices constituting "reasonable and prudent action" to achieve the required public policy outcome. "Calling" someone might be "expected" because of the material nature of the event and the individual's interest at risk because of that event. Under such circumstances, it is inconceivable

to PIA that we should be advising members – "But if the phone number is listed on a Do-Not-Call List, despite the fact that calling would be the better additional method of communicating, please only send by mail."

5. FCC also needs to coordinate with FTC in how the "federal oversight enforcement apparatus" will be designed and implemented for these "collective" federal efforts. FTC advised that it intends to coordinate its No-Call database with the States Attorneys General efforts. We should not have one database for FTC efforts and another for FCC. As we clarify and correct these state problems, PIA wishes to keep the cooperation and enforcement among FCC, FTC and AGs as clear and free of conflict among these parties as possible.

6. It is unclear whether the insurance sector will need to comply with several of the state No-Call efforts under the oversight of the state AG. In their rush to respond to public outcry, several state legislatures have adopted No-Call legislation that includes the same law and rule conflict for the insurance sector as noted above.

PIA suggested in each state action circumstance that the legislation direct each of the already existing regulatory agencies over each sector of commerce to express the new No-Call statute in their functional regulatory equivalent to the extent that such does not conflict with existing law or practice. This functional regulatory approach is also found in federal law – the Gramm-Leach-Bliley Act.

I look forward to discussing the issues raised here, and any other appropriate issues with the FCC.

Respectfully Submitted,

Patricia A. Borowski
Senior Vice President